
OPINION OF THE PUBLIC ACCESS COUNSELOR

TIM EVANS
Complainant,

v.

HARRISON COUNTY SHERIFF'S DEP'T.,
Respondent.

Formal Complaint No.
21-FC-142

Luke H. Britt
Public Access Counselor

BRITT, opinion of the counselor:

This advisory opinion is in response to a formal complaint alleging the Harrison County Sheriff's Department violated the Access to Public Records Act.¹ Attorney Jeffrey Lowe filed an answer on behalf of the agency. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on September 10, 2021.

¹ Ind. Code § 5-14-3-1-10.

BACKGROUND

This case involves a dispute over access to certain video footage captured at the Harrison County jail in 2018.

On September 3, 2021, Tim Evans (Complainant), a reporter with the *Indianapolis Star*, filed a public records request with the Harrison County Sheriff's Department (HCS D) seeking the following:

All jail camera footage recorded of Jerod Draper, who was booked into the jail on Oct. 4, 2018. This request includes all camera footage, including but not limited to surveillance cameras and body cameras.

On September 9, 2021, the HCS D denied Evans' request. The HCS D argued that disclosing the footage to the general public would potentially put the safety and security of the jail, its employees, and inmates at risk. The Sheriff cited Indiana Code section 5-14-3-4(b)(10), which gives a public agency discretion to withhold administrative or technical information that would jeopardize a record keeping or security system.

HCS D asserted that disclosing the surveillance video would reveal the location of the camera, which puts the camera at risk for damage by anyone entering the jail having seen the footage.

Additionally, the department argued that the jail itself, is a security system and releasing the video would reveal technical information of the jail and its practices that would put the jail's operations at risk.

The next day, Evans filed a formal complaint alleging the HCSD's denial violates the Access to Public Records Act (APRA). Evans argues the requested video footage will not jeopardize security in the jail or pose any risk to jail operations.

First, Evans contends the portion of the jail where the camera or cameras captured the video is a secure, locked environment; and thus, there is no risk to the cameras from the general public. Second, Evans disagrees that providing the video would reveal any technical information that would pose a risk to the jail's operations. Third, Evans asserts that the presence and location of surveillance cameras are typically no secret to people in jail. He claims they are most likely visible to anyone held in jail or visiting.

On October 4, 2021, the Harrison County Sheriff's Department filed an answer to Evans' complaint. Essentially, the department reiterates its previous arguments about why the denial is proper in accordance with Indiana Code section 5-14-3-4(b)(10). Additional facts and information will be provided as necessary.

ANALYSIS

1. The Access to Public Records Act

The Access to Public Records Act (APRA) states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." Ind. Code § 5-14-3-1. The Harrison County Sheriff's Department (HCSD) is a public agency for purposes of APRA; and therefore, subject

to its requirements. *See* Ind. Code § 5-14-3-2(q). As a result, unless an exception applies, any person has the right to inspect and copy the department's public records during regular business hours. Ind. Code § 5-14-3-3(a).

Indeed, APRA contains mandatory exemptions and discretionary exceptions to the general rule of disclosure. *See* Ind. Code § 5-14-3-4(a)—(b).

2. Administrative or technical information exception

Under APRA, a public agency has discretion to withhold from disclosure “[A]dministrative or technical information that would jeopardize a record keeping or security system.” Ind. Code § 5-14-3-4(b)(10).

This is the disclosure exception the HCSD relies on to support denial of the request in this case.

In *City of Elkhart v. Agenda: Open Government, Inc.*, the Indiana Court of Appeals held that the exception did not apply to telephone numbers contained in certain phone records maintained by Elkhart because telephone numbers in and of themselves constitute neither technical nor administrative information. 683 N.E. 2d 622 (Ind. Ct. App. 1997).

Specifically, the court observed “the term technical may be defined as ‘of or related to technique’ and ‘marked by or characteristic of specialization.’” *Id.* at 626 (internal citations omitted). Additionally, the court noted “the term administrative may be defined as ‘of or relating to administration.’” *Id.* at 627 (internal citations omitted).

So too is the case here. The video footage Evans requested is not inherently technical or administrative as required by the statutory exception.

What is more, the court also observed that “Section 4(b)(10) provides a discretionary exception for public records containing a ‘type’ of information due to its nature and not because a speculated ‘use’ of the information would jeopardize a record keeping or security system.” *Id.*

Similarly, most of the HCSD’s arguments in support of non-disclosure are based on how a member of the public or inmates could use the recording to jeopardize the effectiveness of the system.

The HCSD also argues that this office previously concluded that a correctional facility did not violate APRA by denying disclosure to a surveillance video based on Section 4(b)(10).

This claim misstates the conclusion of the opinion.

In *Opinion of the Public Access Counselor*, 14-FC-84 (2014), regarding the applicability of Section 4(b)(10) to prison surveillance video, this office stated the following:

Regarding the surveillance video, I have not been afforded the opportunity to view the footage. Therefore, I cannot make a conclusive determination if the footage would compromise the integrity of the Facility security system pursuant to Ind. Code § 5-14-3-4(b)(10). The better exception to cite would be Ind. Code § 5-14-3-4(b)(23)(B) (records requested by an offender that: concern or could affect the security of a jail or correctional facility).

In that case, this office did not conclude the exception applied to the requested video footage. Although the opinion

did not conclusively determine whether the exception applied to the requested footage, this case is distinguishable for two primary reasons.

First, the 2014 opinion did not examine or discuss the court of appeals opinion in *City of Elkhart v. Agenda Open Government, Inc.*, which this office concludes is dispositive in this case.

Second, the complainant in the 2014 case was an offender incarcerated at the Indiana Department of Correction's Pendleton facility. As a result, this office resolved the complaint on different grounds because the agency had a better discretionary disclosure exception at its disposal under Indiana Code section 5-14-3-4(b)(23)(B), which does not apply in this case.

CONCLUSION

Based on the foregoing, it is the opinion of this office that the Harrison County Sheriff's Department has not met its burden of proof for nondisclosure under the Access to Public Records Act because the cited exception to disclosure does not apply to the requested record.

A handwritten signature in black ink, appearing to read 'LH Britt', is positioned above the printed name.

Luke H. Britt
Public Access Counselor